

SINGAPORE REPORTS**HWANG JU-IN v. HUANG HAN CHAO**

[C.A. (Chua, Choor Singh and Rajah JJ.) October 8, 1977]

[Singapore — Civil Appeal No. 9 of 1977]

*Practice and Procedure — Receivers — Appointment of — Registrar — Power to appoint receiver — R.S.C. 1970, O. 32 r. 9.**Partnership — Dissolution — Application for appointment of receivers and accounts to be taken.*

The parties' partnership was dissolved in 1970. Since then, the books of the partnership were retained by the respondent. There was little co-operation between the parties. The appellant applied for appointment of a receiver and accounts to be taken.

Held: (1) the Rules of the Supreme Court clearly empower the Registrar by Order 32 rule 9 to appoint a receiver, there being no direction by the Chief Justice that such power shall not be exercised by the Registrar;

(2) there was no co-operation at all between the parties and it was therefore desirable that an independent third party such as a receiver take over the affairs of the partnership.

The International Banking Corporation v. Quek Cheng Chek & Anor.⁽¹⁾ explained.

[Editorial Note: See note "Registrar's power to appoint receivers" at [1977] 1 M.L.J. lxvi.]

Case referred to:-

(1) *The International Banking Corporation v. Quek Cheng Chek & Anor.* [1933] M.L.J. 186.

COURT OF APPEAL.

Cheng Tim Pin for the appellant.

L.A.J. Smith for the respondent.

Choor Singh J. (delivering the judgment of the Court): This is an appeal against the Order made by the Chief Justice on February 25, 1977 allowing an appeal against the Order made by the Acting Registrar on November 26, 1976 appointing a receiver of the partnership business carried on by the appellant and the respondent as partners.

The partnership between the appellant and the respondent was dissolved on November 24, 1970 and since that date the account books of the partnership business have been in the possession of the respondent. The respondent employed Cooper Brothers to audit the accounts of the partnership but in spite of repeated requests, the respondent has not produced to the appellant the audit report made by Cooper Brothers. The appellant therefore decided to have the accounts of the partnership audited by auditors appointed by him but the respondent refused to make available to the appellant's auditors the account books of the partnership to enable them to conduct an audit. Under the circumstances the appellant commenced these proceedings and made an application before the Acting Registrar for the appointment of a receiver and other consequential orders. The Acting Registrar made an order in terms of the application. The respondent appealed against the Order made by the Acting Registrar and his appeal was allowed by the Chief Justice who reversed the Order made by the Acting Registrar.

The notes of the hearing before the Chief Justice do not show on what grounds the Chief Justice re-

A versed the order made by the Acting Registrar.

Before us, it is contended by counsel for the appellant that the Chief Justice allowed the appeal on the ground that the Acting Registrar had no power to appoint a receiver. On the other hand, counsel for the respondent contends that the appeal was allowed because the Chief Justice held that as the partnership had no assets "there was nothing to receive" and there was therefore no necessity for a receiver to be appointed. We propose to examine both contentions.

The powers of the High Court are laid down in section 18 of the Supreme Court of Judicature Act (Cap. 15) which provides that "the High Court shall have all such powers as are vested in it by any written law for the time being in force in Singapore". And Rule 6 of the First Schedule to the Act gives the High Court power to appoint a receiver. Section 10(2) of Chapter 15 provides as follows:—

"(2) A judge may, subject to Rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the High Court, in all such causes and matters and in all such proceedings in any causes or matters as might formerly have been heard in court or in chambers respectively by a single judge, or as may be directed or authorised to be heard by Rules of court for the time being in force."

It is clear therefore that a judge sitting in chambers has power to appoint a receiver.

E The powers of the Registrar are laid down in section 62(1) of Chapter 15 which provides as follows:—

"(1) The Registrar... shall subject to the provisions of this Act or any other written law have the same jurisdiction, powers and duties as the masters of the Supreme Court, clerks of criminal courts, registrars and like officers in the Supreme Court of Judicature in England and, in addition, such further jurisdiction, powers and duties as may be prescribed by Rules of court."

Rule 9 of Order 32 clearly gives the Registrar power to exercise all such authority and jurisdiction as may be exercised by a judge in chambers. It provides as follows:—

G "9. The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these Rules may be transacted and exercised by a judge in chambers except such business, authority and jurisdiction as the chief justice may from time to time direct to be transacted or exercised by a judge in person or as may by any of these Rules be expressly directed to be transacted or exercised by a judge in person."

H There is no direction by the Chief Justice that the appointment of a receiver shall be made only by a judge in person.

The case of *The International Banking Corporation v. Quek Cheng Chek & Anor.*⁽¹⁾ cited by Mallal in his Supreme Court Practice at page 686 as authority for his note that "the court cannot delegate to the Registrar power to appoint a receiver" is no longer good law. That was a case under the Civil Procedure Code of the Straits Settlements which has been repealed. The Rules of the Supreme Court, 1970, which are now in force and which supersede the said Civil Procedure Code clearly empower the Registrar by Order 32 rule 9 to appoint a receiver, there being no direction by the Chief Justice, that such power shall not be exercised by the Registrar.

As regards the contention of counsel for the respondent, there is evidence that the partnership has substantial book-debts to be collected; that the respondent has not taken any steps to collect such debts and that some of them will soon be statute-barred if not already statute-barred. There is no doubt that there is no co-operation at all between the parties and it is therefore desirable that an independent third party such as a receiver take over the affairs of the partnership, collect book debts, prepare final accounts and thus complete the dissolution of the partnership.

For the above reasons, we allow the appeal and restore the Order made by the Acting Registrar on November 26, 1976.

Appeal allowed.

Solicitors: *Yap & Yap; L.A.J. Smith.*

NG CHWEE POH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) September 30, 1977]

[Singapore — Magistrate's Appeal No. 247 of 1975]

Revenue Law — Tax Evasion — Understating value of assets — Assets and liabilities of taxpayer, his wife and dependent children — Fixed deposit — Interests from — "Wilfully with intent to evade tax" — Whether evaded income of partnership can be halved between partners — Income Tax Act (Cap. 141), ss. 36, 65A & 96(1)(a) & (c).

In this case appellant was tried on nine charges as follows:—

On the first charge under section 96(1)(c)

That he, on or about the October 24, 1972 in Singapore, having been required by the Comptroller of Income Tax by notice dated March 1, 1972, pursuant to section 65A of the Income Tax Act, Chapter 141, to furnish him with particulars to wit a statement of assets and liabilities of himself, his wife and dependent children as at December 31 of each year from 1960 to 1971, did wilfully with intent to evade tax, give false answer by understating the net value of his assets by \$248,939.46, and he had thereby committed an offence under section 96(1)(c) of the Income Tax Act, Chapter 141, and punishable under section 96(1) of the said Act.

On the second to ninth charges under section 96(1)(a)

That he, on several dates in Singapore, did wilfully with intent to evade tax, omit from his returns of income for the Years of Assessment 1965, 1966, 1967, 1968, 1969, 1970, 1971 and 1972, the following amounts of taxable income being bank interest received from Fixed Deposit Accounts:—

Charge No.	Date of Offence	Taxable Income	Year of Assessment
2nd	25.9.65	\$ 1,660	1965
3rd	12.7.66	2,774	1966
4th	8.6.67	2,500	1967
5th	5.7.68	3,500	1968
6th	12.9.69	4,162	1969
7th	27.6.70	5,991	1970
8th	14.5.71	18,621	1971
9th	31.5.72	2,410	1972

and he had thereby committed offences under section 96(1)(a) of the Income Tax Act, Chapter 141, and punishable under section 96(1) of the said Act.

The appellant was the precedent partner of Poh Hua Granite Quarry Co., the other partner being his father, Ng Tham. On November 12, 1971, the Department first sent a Notice under section 65A of the Act to the appellant requiring him to furnish particulars of assets and liabilities of himself, his wife and dependent children as at December 31, 1969. He did not comply with this request.

On March 1, 1972, a Notice under section 65A was served personally on him requiring him to submit a statement of assets and liabilities of himself, his wife and dependent children as at December 31 of each year from 1960 to 1971. On October 24, 1972, the appellant through his Accountant submitted a net worth statement. Relying substantially on this net worth statement the Department compiled a net worth computation statement showing total discrepancy of \$255,638. From this amount, additional tax of \$89,545.95 would arise. On November 29, 1973, the matter was settled for a sum of \$150,000 representing additional tax of \$89,545.95 and penalty of \$60,454.05 in lieu of prosecution. As part of the settlement, the appellant signed a Certificate of Disclosure declaring that he had disclosed all his assets to the Department.

One month after this settlement, the Bank wrote to the Department that it had inadvertently omitted several Fixed Deposits in the name of the appellant. Further investigation revealed that he had omitted seven Fixed Deposits in his own name and in that of his wife totalling \$248,939.46. The Department then compiled a second Net Worth Computation Statement by incorporating these seven Fixed Deposits which produced a further discrepancy of \$311,926 which if disclosed at the time of settlement would have given rise to further additional tax of \$155,967.70. It was also found that interest earned from these Fixed Deposits, totalling \$41,618 had not been declared in the appellant's annual tax returns for the Years of Assessment from 1965 to 1972.

The above-mentioned nine charges were preferred against the appellant and he was tried in the 8th District Court from October 21, 1975 to November 29, 1975 when he was convicted on all the charges and sentenced as follows:—

- on the first charge — to 9 months' imprisonment and to pay a penalty of \$467,909.10;
- on each of the other 8 charges — to 6 months' imprisonment and to pay a total penalty of \$51,002.40, — all the terms of imprisonment to run concurrently.

On appeal, the appellant's 3 main contentions were:—
(1) that the Comptroller of Income Tax Notice under section 65A requested for "a statement of assets and liabilities of himself, his wife and dependent children" but nowhere in the section is dependent children mentioned. It is argued that the purported request contained in the Notice is considerably in excess of the powers given by section 65A and is therefore not "asked or made in accordance with the provision of this Act" as required by section 96(1)(c) of the Act under which the charge is brought and the charge consequently discloses no offence. Thus the Notice under section 65A of the Act, relied upon by the respondent and referred to in the first charge is *ultra vires* and void and therefore the charge is void; (2) that the prosecution had not proved beyond reasonable doubt that the appellant had acted "wilfully with intent to evade tax" and the trial judge should have acquitted the appellant; (3) that the profits of Poh Hua Granite Quarry Co. are, in law, payable equally to both partners, and the appellant is, in law, required to account to his co-partner his share of the firm's monies which the appellant has in his account or which he may have utilized. The legal position is that half the net money of the firm which is in the appellant's possession belongs to his co-partner and the co-partner is to that extent a creditor and the apparent assets of the appellant must be, to that extent, reduced to give a true picture of his worth. The factual result of the application of the law is that the understatement was only \$16,394.08 and not \$248,939.46 as set out in the first charge.

Held: (1) there is no substance in the argument as para (e) of section 65A of the Income Tax Act is wide enough to enable the Comptroller to ask for information as to the assets of the taxpayer's dependent children;

(2) from the evidence the appellant was very much aware of the existence of the Fixed Deposits at the time he submitted the net worth statement on October 24, 1972. The evidence showed that he had been keeping constant track of the Fixed Deposits. On the receipt of the first Notice under section 65A he embarked upon a sudden programme of withdrawals of all the Fixed Deposits and then employed a complicated scheme whereby he concealed his identity and had effective and actual control substantially over the withdrawn Fixed Deposits. In every year from 1965 to 1971 the appellant had been keeping two sets of accounts. At the close